



DEPARTMENT OF INFORMATION RESOURCES
DIR Contract No. DIR-TSO-2735, Cloud Services

Exhibit F-3 - HP Public Cloud Services

HP Cloud Enterprise Customer Agreement

THIS ENTERPRISE CUSTOMER AGREEMENT (“**Customer Agreement**”) is between the State of Texas (“**Customer**”) and HP Enterprise Services, LLC (“**HP**”) (jointly, the “**Parties**”; separately, “**Party**”), and is effective as the effective date set forth in the DIR Contract No. DIR-TSO-2735 noted above. (“**Effective Date**”).

Customer’s use of and access to the HP Public Cloud and its associated service offerings (“**Services**”) is governed by the DIR Contract No. DIR-TSO-2735, this Customer Agreement, HP’s Acceptable Use Policy (“AUP” found at <http://www.hpcloud.com/acceptable-use-policy>) and HP’s Online Privacy Statement (found at <http://www8.hp.com/us/en/privacy/privacy.html>) referenced herein, and HP’s SLA (found at <https://www.hpcloud.com/SLA>), and the terms of Customer’s Order (collectively, the “**Agreement**”). Any changes to the AUP will be consistent with the purpose of the AUP to encourage responsible use of HPs networks, systems, services, Web sites, and products. If any such change materially and adversely affects Customer’s legitimate use of the Services, Customer may terminate the Services without incurring any further liability. Changes to the AUP may not in any material way diminish Customer’s rights in the Services, or increase Customer’s costs.

1. HP’S OBLIGATIONS.

1.1 Provision of Services. HP will provide Services as specified in a Customer order accepted by HP (“**Order**”). Orders may be made through a Customer’s self-provisioning of Services through its HP Cloud account or by a Service configuration request to HP, and may be in paper or electronic form and signed manually or electronically. In an effort to improve or safeguard security or availability of Services, HP may change, discontinue, add, modify, re-price or remove features or functionality from Services from time to time with reasonable notice to Customer, provided such changes do not cause a material degradation in Services. HP will provide Customer with notice prior to any change in price. If Customer does not agree to the price increase, Customer may terminate the Order or Orders without penalty in accordance with Section 7.3.

1.2 Security. HP will implement reasonable and appropriate security measures consistent with a public cloud and with the level(s) of security available to HP’s Public Cloud users designed to help Customer secure Content against accidental, unauthorized or unlawful loss, or unauthorized access by or disclosure to third parties. “**Content**” means any software, online service, feature or technology, data or other



content, that Customer-authorized users of the Services (“**Service Users**”) may provide to HP pursuant to this Agreement. Content includes any of the foregoing that Service Users (i) upload or transfer to the Services, and/or (ii) create and/or modify using the Services.

1.3 Support. HP will provide commercially reasonable support (“**Support**”) for the Services, with access to Support available 24x7x365. Details regarding Support may be found at <http://www.hpcloud.com/support>. Unless otherwise agreed, HP will provide support only to Customer and not to (i) any end user of customer’s services or offerings, or (ii) any other entity Customer authorizes to use the Services.

1.4 Future Availability. HP reserves the right to not release Beta Services or, even if released, to alter prices, features, specifications, capabilities, functions, release dates, continued beta availability, general availability, or other characteristics thereof. “**Beta Services**” means services provided to HP’s customers on a trial basis without warranties or service level agreements (“**SLA**”) and not for use in a production environment prior to general availability. Beta Services may be offered on a private or public basis, often at reduced pricing, and their beta release status is indicated on the program and pricing information pages available on the HP Cloud website (<http://www.hpcloud.com>).

1.5 Service Levels. HP offers Customers SLAs for various Services, the details of which are listed at <https://www.hpcloud.com/SLA>. SLAs are not available for Beta Services. In the event any such SLAs are not maintained at stated levels for the relevant Services, HP will provide Customer with the fee credits for such Services as stated at <https://www.hpcloud.com/SLA>, as applicable.

2. PRIVACY.

2.1 Collection of Personally Identifiable Information. Customer may access the Services via an HP-controlled website. Customer’s interaction with such website, and any Personally Identifiable Information (“**PII**”) that may be collected by the website, is governed by the HP Online Privacy Statement. To the extent Customer’s PII is included in Content provided to HP, HP will treat such PII in accordance with Section 5.1 below. “**Personally Identifiable Information**” means (i) any data, either alone or in combination with other information, that can be used to uniquely identify, contact or locate a single person, and (ii) protected health information (“**PHI**”) as defined in the Health Insurance Portability and Accountability Act (“**HIPAA**”) at 45 CFR Section 160.103. The HP Public Cloud is not fully compliant with the HIPAA rules for the handling of PHI.

2.2 HP Access to Content. The Parties acknowledge that although the structure of the HP systems used in connection with the Services makes it technically possible for HP to access Content, direct access to Content by HP is not intended. In the event HP is required to access Content, HP will not handle, process or disclose Content to non-HP third parties except: (i) with the consent of, or as instructed by Customer; (ii) in connection with performing Services under this Agreement; (iii) to respond to authorized information requests of law enforcement or other governmental authorities; (iv) to comply with applicable laws, regulations, subpoenas, discovery requests or court orders; (v) to investigate and help prevent security threats, fraud, or other illegal, malicious, or inappropriate activity; (vi) to enforce/protect the rights and properties of HP, Customer or third parties; or (vii) in the case of PII, with the prior informed consent of the data subject about whom the PII pertains. HP will notify Customer in writing prior to disclosing Content to any non-HP third party, for any purposes other than furnishing the Services or complying with Customer’s instructions, provided HP is not prohibited from providing notice to Customer by governmental or law enforcement authorities.

2.3 Data Controller. Customer is and shall remain the data controller of the Content it uploads, transfers or otherwise provides as part of the Services. HP is a service provider to Customer and has the role of data processor. HP does not own or otherwise act as data controller of the Content. It is Customer's responsibility to verify that the security and privacy protections offered by the Services are adequate and in compliance with all applicable laws governing the type of data included in the Content uploaded, transferred or provided in connection with the Services.

2.4 Cross Border Data Transfers. If Customer uses HP Public Cloud object storage with the Services' content delivery network ("**CDN**"), Customer acknowledges that Content is cached and distributed across a global network of servers. Customer agrees that the data centers that support the Services and house its Content will be located in the United States. Any obligations of HP pursuant to this Agreement may be performed by any HP company, subsidiary, Affiliate or authorized third party worldwide.

2.5 Location of Data Centers. HP reserves the right to locate the infrastructure for providing the Services in any country or location permitted under applicable laws and regulations, provided HP does not change the location of the data center in which Customer's Content is stored and/or from which Services for Customer are provisioned to a different country without Customer's prior written consent.

3. USE OF AND ACCESS TO THE SERVICES.

3.1 Use of Services. HP grants Customer a non-exclusive, non-transferable, non-sublicenseable, revocable license in the Services for the sole purpose of: (i) using and accessing the Services for internal purposes; and (ii) using and accessing the Services for a Customer Offering, subject to the terms and conditions of this Agreement. "**Customer Offering**" means services created by Customer for access and use by Customer's end users. The licenses provided in this Section 3.1 shall supersede any license terms included with the code in the file named "COPYING" or "LICENSE" or like caption in any programmatic interface that HP provides to Customer, except where such code is governed by an open source or freeware license.

3.2 Access to Services. Customer may access the Services via the HP Cloud control panel, or via a Programmatic Interface that HP provides to Customer. "**Programmatic Interface**" means any code, method, or process used to interface with the Services, including an application programming interface ("**API**"), command line interface ("**CLI**"), language binding or wrapper. HP may modify its control panel or Programmatic Interfaces at any time, or may transition to new Programmatic Interfaces.

3.3 Resale of Services. Customer may not resell any of the Services.

3.4 Additional Third Party Terms. HP may from time to time offer Customer access to data, software or other content provided by third parties ("**Third Party Content**") that is subject to separate terms. Such terms will be made available to Customer through a notification within the Services or by the entity offering the Third Party Content. No Third Party Content will be allowed under this DIR Contract No. DIR-TSO-2735 unless specifically allowed under Appendix C Pricing Index. HP will not provide support for Third Party Content, but may provide billing and associated services related thereto, in accordance with Appendix C Pricing Index of the DIR-TSO-2735 Contract.

3.5 Customer Obligations. Customer agrees to do each of the following: (i) comply with all applicable laws, rules and regulations (including those regarding data privacy, copyright, and export control), and the terms of this Agreement; (ii) pay the fees for the Services when due; (iii) use reasonable security precautions to provide access to the Services by its Service Users, including private keys and other security measures; (iv) cooperate with HP's reasonable investigation of outages, security matters, and any



suspected breach of this Agreement; (v) comply with all license terms or terms of use for any software, content, service or website when using the Services; (vi) provide HP with accurate, current and complete information (“**Account Information**”) when establishing Customer’s account for the Services; (vii) keep Customer’s billing contact and other Account Information up to date; (viii) be responsible for the use of the Services and Customer Offering by Customer, Service Users, any person or third party to whom Customer gives access to the Content or Services; (ix) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and timely notify HP of any known or suspected unauthorized use of Customer’s account, the Services, or any other breach of security; and (x) use the most current version of the Services. Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage.

3.6 Customer Affiliates. Any Customer Affiliate may use the Services under the terms of this Customer Agreement by executing a Customer Order under this Agreement, indicating the Affiliate’s relationship to Customer. “**Affiliate**” means, with respect to an entity, any other entity or person controlling, controlled by, or under common control with, that entity. “**Control**” means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise.

4. CONFIDENTIALITY; REPRESENTATIONS AND WARRANTIES.

4.1 Reserved.

4.2 Customer Representations and Warranties. Customer represents and warrants that it has the full power and authority to enter into this Agreement and to grant HP the rights granted herein. Customer represents and warrants that the Content does not and shall not violate or infringe any copyright rights of any third party.

4.3 HP Representations and Warranties. HP represents and warrants that it has the full power and authority to enter into this Agreement, to grant Customer the rights granted herein, and to provide the Services as set forth hereunder. HP further represents and warrants that (i) all Services will be performed materially in accordance with the HP documentation provided to Customer that is required to deploy and manage the Services; and (ii) the Services as provided under this Agreement shall not violate or infringe any copyright rights of any third party.

5. HANDLING OF CONTENT AND INTELLECTUAL PROPERTY.

5.1 Content. HP may handle and process Customer’s Content solely to the extent required to (i) provide Services to Customer; (ii) provide support for the Services; (iii) perform or enforce contractual obligations under this Agreement; or (iv) comply with applicable law (including subpoenas or orders issued by courts or governmental authorities) or otherwise safeguard the security and availability of the Services and protect the rights, property or safety of HP, Customer, or third parties. The rights to handle and process Customer Content in this Section 5.1 include the right of HP subsidiaries and Affiliates and any third parties providing all or part of the Services on behalf of HP to achieve the foregoing.

5.2 Trademarks. Neither Party may use the other Party’s name or trademarks in any type of advertisement materials, web sites, press releases, interviews, articles, brochures, business cards, project reference or client listings, without the other Party’s prior written consent.

6. FEES AND TAXES.

6.1 **Payment.** Customer agrees to pay the fees charged by HP and comply with the payment procedures and terms found in the DIR Contract No. DIR-TSO-2735. Pricing shall be in accordance with Appendix C Pricing Index of the DIR Contract No. DIR-TSO-2735.

6.2 **Reserved.**

7. TERM, SUSPENSION AND TERMINATION.

7.1 **Term.** The term of this Agreement shall commence on the date that HP first accepts Customer's Order and shall continue until terminated as provided in this Section 7.

7.2 **Suspension.** HP may suspend provision of Services to Customer if any of the following occurs: (i) HP reasonably believes that the Services are being used (or have been or will be used) by Customer in violation of this Agreement; (ii) Customer does not cooperate with HP's reasonable investigation of any suspected violation of this Agreement; (iii) HP believes that Services provided to Customer have been accessed or manipulated by a third party without Customer's consent or in violation of this Agreement; (iv) HP reasonably believes that suspension of the Services is necessary to protect HP's network, HP's other customers, or others in general; (v) an uncontested payment for the Services is overdue by more than thirty (30) days and the notice period provided in Section 6.1 has passed without payment; (vi) the continued use of the Services by Customer may have a material adverse impact on the Services or the systems or content of HP or any other HP customer; (vii) HP reasonably believes that the use of the Services by Customer may expose HP, its affiliates, or any third party to liability; or (viii) suspension is required by law. HP will give Customer reasonable advance notice of a suspension under this Section 7.2 and a chance to cure the grounds on which the suspension are based, unless HP determines, in HP's reasonable commercial judgment, that either suspension on shorter or contemporaneous notice or immediate suspension without notice is necessary to protect HP, its other customers, or any third party from material operational, security, or other material risk or the suspension is ordered by a court or other judicial body. If the suspension was based on Customer's material breach of Customer's obligations under this Agreement, then HP may continue to charge Customer the fees for the Services during the suspension in accordance with the DIR Contract No. DIR-TSO-2735.

7.3 **Termination for Convenience.** Customer may terminate this Agreement for convenience at any time. If Customer terminates this Agreement, Customer shall be responsible for all uncontested fees for Services incurred by Customer through the termination date. HP may terminate this Agreement for convenience at any time upon thirty (30) days advance written notice.

7.4 **Termination for Breach.** HP may terminate this Agreement if any of the following occurs: (i) HP discovers the information Customer provided to HP about Customer's proposed use of the Services was materially inaccurate or incomplete; or (ii) Customer fails to comply with any provision of this Agreement and does not remedy the failure within thirty (30) days of receipt of HP's notice to Customer describing the failure. HP will give Customer written notice of termination under this Section 7.4 unless HP determines, in HP's reasonable commercial judgment, that immediate termination without notice is necessary to protect HP, its other customers, or any third party from material operational, security, or other material risk. Customer may terminate this Agreement for breach upon written notice to HP if HP materially fails to meet any obligation stated in this Agreement and does not substantially remedy that failure within thirty (30) days of receipt of Customer's written notice describing the failure.



7.5 Access to Data. In the event of an investigation by law enforcement (or other governmental) authorities or in response to a material security issue, or otherwise to protect HP's network, at HP's sole commercially reasonable discretion, Customer may not have access to Content stored in the Services during such a suspension. HP shall preserve Content and allow Customer to access Content during any non-governmentally mandated suspension of Services (provided that such access does not place the security or availability of HP's network at risk) and during any notice period prior to, and for a period of thirty (30) days after, the effective date of any termination of this Agreement. HP shall not be liable to Customer for any losses or damages (including loss of Content) resulting from suspension or any termination by HP where suspension or termination results from any of the following: (i) any act or omission of Customer in material violation of the Agreement; (ii) any act or omission of a third party not under the control of HP, provided that HP has taken reasonable measures to prevent such third party act or omission giving rise to such suspension or termination; (iii) Customer's equipment, software or technology or the equipment, software or technology of a third party under Customer's control; (iv) Internet access or other problem beyond the demarcation point of HP-controlled data centers or any other force majeure event beyond the reasonable control of HP; or (v) any actions reasonably taken by HP to respond to a security threat or protect the availability of the network. HP has no liability for loss of Content in any instance where Customer requests deletion of such Content.

7.6 Effect of Termination. Where Customer requests any termination of the Agreement, it is Customer's responsibility to schedule an effective date of termination that provides Customer with sufficient time to remove its Content and implement an alternative to the HP Public Cloud for preserving Content. Except as otherwise mutually agreed in writing by HP and Customer, upon expiration or termination of this Agreement, Customer must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Customer by HP and any other materials provided to Customer by HP in connection with the Services, including pointing the DNS for Customer domain name(s) away from the Services. Customer must also return or, at HP's request, destroy any HP owned or provided component of the Services in Customer's possession. Following a period of thirty (30) days after the effective date of termination or expiration of the Agreement, HP has no further duty to protect Content as Customer is no longer paying for Services provided, however, that HP shall not release or disseminate or allow or provide access to the content: rather, HP shall destroy it. Unless otherwise agreed between the Parties, HP will have no obligation to provide any transition services or access to data except as expressly stated in Sections 7.5 or 7.6.

7.7 Survival. All provisions that by their nature are intended to survive expiration or termination of this Agreement shall survive expiration or termination of this Agreement.

8. UNAUTHORIZED ACCESS TO CONTENT OR USE OF THE SERVICES OR CUSTOMER OFFERING. HP is not responsible to Service Users or any third party for unauthorized use of or access to Content, the Services, or a Customer Offering, where unauthorized access is enabled (i) by Customer (or its Affiliates); or (ii) under circumstances under Customer's (or its Affiliates') control. HP shall promptly notify Customer if HP becomes aware of any unauthorized access to or use of Customer's Content, unless precluded from doing so by governmental or law enforcement authorities.

9. DISCLAIMERS. HP does not promise that the Services will be uninterrupted, error-free, or completely secure. Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of Service User's privacy, confidential information, Content, and/or property. HP has no obligation to provide security other than as stated in this Agreement. TO THE FULL EXTENT PERMITTED BY LAW, HP DISCLAIMS ANY AND ALL WARRANTIES, STATUTORY OR OTHERWISE, NOT EXPRESSLY STATED IN THE AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A

PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Customer is solely responsible for the suitability of the Services chosen. The Services are provided “AS IS”.

10. Reserved.

11. Reserved.

12. MISCELLANEOUS.

12.1 This Agreement is the complete and exclusive agreement between Customer and HP regarding its subject matter and supersedes and replaces any agreement, understanding, or communication, whether written or oral, prior or contemporaneous regarding such subject matter.

12.2 **Order Acceptance.** HP may reject any Order in HP’s sole discretion. HP’s provisioning of the Services shall be deemed HP’s acceptance of the Order.

12.3 **Changes to this Agreement.** Except as otherwise expressly provided under this Agreement, no modification of this Agreement shall be made without the prior written consent of Customer and HP. Any changes made during the term of this Agreement, including with respect to the SLAs for the Services, will become effective thirty (30) days after the date HP posts or links to the HP public cloud services website, or otherwise provides notice of such modified Agreement in accordance with Section 12.4. Notwithstanding the foregoing, if HP lowers any fees, such change in fees shall be effective immediately upon such change being posted at <http://www.hpcloud.com/pricing> or as provided in Section 12.4.

12.4 **Notices.** In addition to notices required under the DIR Contract No. DIR-TSO-2735, Customer’s routine communications regarding the Services should be sent to Customer’s HP Cloud account team using Customer’s HP Cloud control panel. If Customer wants to give HP a notice regarding termination of this Agreement for breach or other non-routine legal matter, Customer should send it by electronic mail and first-class United States mail to: Data Center TXE01, 3301 Hibbetts Road, Austin, TX 78725, Care of: HP Cloud Support (cloudsupport@hp.com), with a copy to Office of General Counsel, Hewlett-Packard Company, 3000 Hanover Street, MS: 1056, Palo Alto, CA 94304.

HP’s routine communications regarding the Services and legal notices will be sent to the individual(s) Customer designates as the Customer contact(s) on Customer’s account either by electronic mail, United States mail to the address provided in the signature block below, or overnight courier to that address, except that HP may give notice of a proposed amendment to or new version of this Agreement by sending written notice to the address provided in the DIR Contract No. DIR-TSO-2735. Notices are deemed received as of the time delivered, or if that time does not fall within a business day, as of the beginning of the first business day following the time delivered. For purposes of counting days for notice periods, the business day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

12.5 **Third Parties.** There are no third party beneficiaries to this Agreement.

12.6 **Export laws.** U.S. export and import laws and regulations and (if applicable) those of other countries shall govern the export or transmission of any Content to other countries or foreign nationals thereof. Before Customer initiates the export or transmission of any of its Content to any country or a foreign national of any country, Customer shall be responsible for obtaining any required authorization under such laws and regulations.



12.7 **Reserved.**

12.8 **Reserved.**

12.9 **Reserved.**

12.10 **Interpretation.** If there is a conflict between the terms of the DIR Contract No. DIR-TSO-2735, Customer Agreement, HP's Acceptable Use Policy and Online Privacy Statement, or an Order, the documents will govern in the following order: the DIR Contract No. DIR-TSO-2735, Customer Agreement, HP's Acceptable Use Policy, Online Privacy Statement, and the Order. No terms of any other documents, including Customer proposals, invoices, purchase orders, quotations or acknowledgements shall become part of this Agreement unless approved in writing by HP. If any part of this Agreement is found unenforceable by a court or other tribunal, the rest of this Agreement will continue in effect, and the Parties agree that any court or other tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the Parties under this Agreement.

12.11 **Reserved.**

12.12 **Reserved.**